

IN THE UNITED STATES DISTRICT COURT
FOR IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:05CV44-1-MU

JOHN R. ALLEN,

Plaintiff,

v.

JIMMY HATLEY, et al.,

Defendants.

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ORDER

THIS MATTER comes before the Court upon its own motion and upon Plaintiff's Motion for Summary Judgment, filed September 12, 2005.

On February 1, 2005, Plaintiff filed a Complaint pursuant to 42 U.S.C. § 1983 against Defendants Hatley, Hall, and Dail Jr. On February 3, 2005, the Court ordered the Clerk to issue summons and deliver it to the U.S. Marshal for service of process without additional cost. The Court subsequently discovered that none of the Defendants had been effectively served. On May 3, 2005, this Court ordered the Clerk to reissue summons and deliver it forthwith to the U.S. Marshal for service of process without additional cost on all Defendants in compliance with the mandates of Rule 4(e) of the Federal Rules of Civil Procedure.

The United States Marshals Service subsequently informed the Court that it was unable to execute service on Defendants Hatley and Dail, Jr. More specifically, the United States Marshals Service indicated that it attempted to serve these two individuals again but that they were no longer

employed at Lanesboro Correctional Institution. The Court hereby orders the United States Marshals Service to make a reasonable investigative effort to locate Defendants Hatley and Dail, Jr. and to serve them.

In the meantime, Plaintiff has filed a document requesting that summary judgment be entered against the Defendants. Because service has not yet been executed as to two of the defendants in this case, Plaintiff's Motion for Summary Judgment is extremely premature and is denied. In this same motion, Plaintiff also inquires about having nine witnesses subpoenaed. For the same reasons set forth above, such a request is extremely premature and is denied.

IT IS THEREFORE ORDERED THAT:

1. Within sixty days of the filing date of this Order the United States Marshals Service is ordered to make a reasonable investigative effort to locate and serve Defendants Hatley and Dail, Jr.;

2. If the United States Marshals Service is unable to locate and serve Defendants Hatley and Dail Jr. within sixty days of the filing date of this Order, the United States Marshals Service is ordered to report back to the Court the efforts made to locate these two Defendants and why those efforts were unsuccessful; and

3. Plaintiff's Motion for Summary Judgment is **DENIED**.

Signed: October 4, 2005

A handwritten signature in black ink, reading "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen
Chief United States District Judge

